

REMARKS:

In response to the Office Action of April 7, 2004, Applicant requests reconsideration of the application in light of the remarks herein. No new matter has been added.

With respect to the objections to the specification, the Examiner asserts that “proper antecedent basis for the ‘providing’ step set forth in claim 48 could not be found in the specification.” Applicant disagrees. The subject step in claim 48 states: “providing a plurality of sensors and a plurality of plumbing fixtures, each one of the plurality of sensors operably associated with a particular fixture from the plurality of fixtures for requesting operation of the particular fixture.”

The Examiner is directed to Figure 1, which clearly depicts “a plurality of plumbing fixtures” identified by letter F. Each fixture includes a sensor, identified by number 36 in Figure 2. Because each fixture includes a sensor, there is “a plurality of sensors”, as provided in claim 48. The Examiner is also directed to page 9, lines 11-14 of the specification, which refers to fixtures F, as well as page 11, lines 22-23, which refers to sensors 36 on the fixture F. The Examiner’s objection is without merit and should be withdrawn.

The Examiner again asserts that U.S. Patent No. 4,914,758 is prior art to the present application, and rejects claims 27, 30, 33 and 48 as being anticipated by Shaw. It is unclear what the Examiner is attempting to assert with respect to domestic priority data, given the present application is not a continuation-in-part of application Serial No. 07/822,201.

In any event, Applicant set forth this information in its prior response. The priority date is also properly set forth in the Filing Receipt of this application. Therefore, to the extent the Examiner disputes this information, Applicant respectfully disagrees as there is no basis for same. The Examiner and Applicant seem to agree that the present application is a continuation of application Serial No. 09/277,872, now U.S. Patent No. 6,336,233. The Examiner notes that the face of the '233 patent indicates two inventors, both Daniel C. Shaw and Donald F. Bush. The inventorship on the face of the patent is not correct.

The inventorship of the '233 patent was amended during its prosecution by petition to amend inventorship pursuant to C.F.R. §1.48(b). As the Examiner is aware, such a petition is proper, and in fact Examiner Fetsuga accepted the petition during prosecution of the parent application. Therefore, it is improper for Mr. Fetsuga to now maintain that the '233 patent has a different inventorship than the present application, given he was the very examiner to which the petition to amend inventorship was directed.

The Examiner rejects claims 27, 30, 31, 33, 36, 48 and 49 as begin obvious over Robertshaw, Atkins et al. and Evelyn-Veere et al. The Examiner maintains the position that the controller in Robertshaw is a microprocessor as it includes a timing chip, and the term microprocessor connotes no distinguishing structure thereover. Applicant disagrees. The timing chip in Robertshaw automatically overrides the door switch DS at predetermined intervals and again causes all stalls S to flush.

In the present invention, the microprocessor delays operation of one of a plurality of fixtures for an adjustable selected period of time after actuation of one of the sensors.

The timing chip in the '498 patent does not perform the same function, and therefore is not an analogous component to the microprocessor in the present invention.

The Examiner relies on Atkins et al. for the conclusion that “it would have been obvious to one of ordinary skill in the art to associate a valve and sensor with individual fixtures of the Robertshaw water control system”. Applicant disagrees. Atkins is not an analogous water control system to the present invention, and fails to provide a system that delays operation for an adjustable selected period of time. Rather, Atkins et al. provides for a predetermined delay time for actuating a fixture. The delay period is not adjustable. In addition, Atkins fails to provide for a microprocessor which delays operation for an adjustable selected period of time after actuation of a sensor, and which is remote from the fixture.

While the Examiner dismisses many of Applicant's previous arguments, the Examiner has still failed to provide any support for his conclusions of obviousness. It is well established that, in order to establish a prima facie case of obviousness, there must be some suggestion or motivation in the references relied upon which supports their combination. “The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.” *In re Mills*, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990); see also *In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

In the present application, the Examiner has not provided any support, beyond mere conclusions, that their combination is appropriate. “Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention,

absent some teaching, suggestion or incentive supporting the combination.” *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 221 USPQ 929, 933 (Fed. Cir. 1984).

With respect to the Examiner’s rejections based on Evelyn-Veere et al., Applicant submits that Evelyn-Veere et al. teaches away from the system of the present invention. If the controller disclosed in the ‘395 patent may be hard-wired, it is not an analogous component to the microprocessor in the present invention. It is the very ability of the microprocessor in the present invention to be adjustable and not hard-wired that provides an acceptable water control system for prisons.

Claims 27, 30, 31, 33, 36-39, 48 and 49 were also rejected as being obvious over Robertshaw, Atkins et al., Evelyn-Veere et al. and further in view of Morris et al. The Examiner states that, in view of Morris et al., it would have been obvious to associate a plurality of indicators with the Robertshaw water control system in order to facilitate use in a prison. Although Morris et al. mentions the use of lights, the ‘374 patent fails to disclose a controller with an adjustable time delay as in the present invention.

Furthermore, there is no suggestion or motivation for combining the cited references to arrive at the claimed invention. “Most if not all inventions arise from a combination of old elements. ... Thus, every element of a claimed invention may often be found in the prior art. However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. Rather, to establish obviousness based on a combination of elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the application.” *In re Kotzab*, 55 USPQ2d 1313,

1316-17 (Fed. Cir. 2000). The prior art of record fails to provide the requisite suggestion or motivation.

The Examiner rejects claims 40-45 as being obvious over Robertshaw, Atkins et al., Evelyn-Veere et al., Morris et al., and further in view of Book. Book discloses the use of a plurality of switches generally. However, Book does not include a microprocessor as in the present invention, nor does Book, Robertshaw, Evelyn-Veere et al., Atkins et al. or Morris et al. suggest or teach the combined features claimed in the present invention.

Applicant submits that all rejections set forth in the Office Action have been addressed, and respectfully requests reconsideration of the present application and allowance of all pending claims.

Applicant submits herewith a Request for an Extension of Time for three (3) months, along with the requisite fee. It is believed that no other fees are due with this submission. Should that determination be incorrect, then please debit Account No. 50-0548 and notify the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. C. Schrot', written in a cursive style.

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